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January 4, 2002

BY HAND-DELIVERY

Magalie Roman Salas
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

RECEIVED
JAN 4 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Reply Comments of American Public Communications Council in the Matter of
Federal-State Joint Board on Universal Service – CC Docket No. 96-45

Dear Ms. Salas:

On behalf of the American Public Communications Council (“APCC”), we hereby submit an original and four copies of APCC’s Reply Comments in the above-captioned proceeding.

We have sent a hard copy, along with a copy on a 3.5-inch diskette, of the Reply Comments to Qualex International, and three hard copies of the Reply Comments to Sheryl Todd in the Accounting Division.

Also enclosed is an extra copy of the Reply Comments marked “Stamp and Return.” Please stamp the extra copy to confirm your receipt, and return it to us. If you have any questions, please call me at (202) 955-6680.

Sincerely,



Allan C. Hubbard

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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JAN - 4 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
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Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

**REPLY COMMENTS OF
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

The American Public Communications Council ("APCC") strongly endorses Community Voice Mail's recommendation to the Federal-State Joint Board on Universal Service ("Joint Board") that payphone service be added to the definition of universal service.¹ APCC filed comments in the Joint Board's Lifeline proceeding² on December 31, 2001 endorsing Community Voice Mail's recommendation. APCC filed in the Lifeline proceeding because universal service support for payphone service should be provided in much the same way as, and for many of the same reasons that, support is provided for Lifeline service.

A copy of APCC's comments in the Lifeline proceeding is attached. As discussed in those comments, affordable, ready access to the telephone network through payphones is a "lifeline" service for many Americans (and a valuable service for all Americans) and, because of changing economics in the payphone industry, that access is

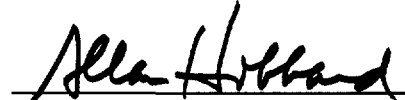
¹ See Community Voice Mail letter dated 30 October 2001 filed as comments on November 5, 2001 in CC Docket No. 96-45 in response to the Commission's notice that the Federal-State Joint Board on Universal Service was seeking comments on the definition of universal service, 66 Fed. Reg. 46461 (Sept. 5, 2001).

² Pursuant to Commission notice, the Joint Board is seeking comments on Lifeline and Link-up service, 66 Fed. Reg. 54967 (Oct. 31, 2001).

quickly eroding. The Joint Board and the Commission should promptly add payphone service to the definition of universal service and provide universal service support to payphone service.

Dated: January 4, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allan Hubbard", written over a horizontal line.

Albert H. Kramer
Robert F. Aldrich
Allan C. Hubbard

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Attorneys for the American Public
Communications Council

CERTIFICATE OF SERVICE

I do hereby certify that on this 4th day of January 2002 a copy of the foregoing Reply Comments Of The American Public Communications Council was served by hand delivery to the following parties:

Sheryl Todd (3 copies)
Federal Communications Commission
Accounting Policy Division
445 12th Street, S.W., Room 5-B540
Washington, D.C. 20554

Qualex International
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445 12th Street, S.W.
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Candace L. Harris

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
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Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

COMMENTS OF
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Albert H. Kramer
Robert F. Aldrich
Allan C. Hubbard

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Attorneys for the American Public
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December 31, 2001

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Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
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**COMMENTS OF
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

In these comments,¹ the American Public Communications Council (“APCC”) strongly endorses Community Voice Mail’s recent recommendation to the Federal-State Joint Board on Universal Service (“Joint Board”) that universal service support be provided for payphone service. Community Voice Mail’s recommendation, which was offered in the Joint Board’s proceeding on the definition of universal service, did not propose specific methods or funding levels for universal service support of payphone service.²

APCC is filing comments in this Lifeline proceeding because universal service support for payphone service should be provided in much the same way as, and for many of the same reasons that, support is provided for Lifeline service.³ As discussed below, for

¹ These comments are filed in response to the Commission’s notice that the Federal-State Joint Board seeks comment on Lifeline and Link-up service, 66 Fed. Reg. 54967 (Oct. 31, 2001).

² See Community Voice Mail letter dated 30 October 2001 filed as comments on November 5, 2001 in CC Docket No. 96-45 in response to the Commission’s notice that the Federal-State Joint Board on Universal Service was seeking comments on the definition of universal service, 66 Fed. Reg. 46461 (Sep. 5, 2001). A copy of Community Voice Mail’s letter is attached as Appendix A.

³ By filing initial comments in this Lifeline proceeding, APCC provides interested parties an opportunity to respond by reply comments due February 28, 2002. APCC also plans to support Community Voice Mail’s recommendation by filing reply comments in the Joint Board’s proceeding on the definition of universal service.

many Americans ready access to payphones is a “lifeline” service and, because of changing economics in the payphone industry, that access is quickly eroding.

I. INTRODUCTION AND SUMMARY

Payphones are a unique and vital form of universal service that should rank high on the list of services eligible for federal universal service support. Payphone service is unique in that it is an “on demand/per use” service in which users are not required to make an upfront investment in equipment or pay recurring monthly charges. Payphone service provides Americans, including those at the lowest income level, with highly affordable access to the telephone network.

Payphone service is vital in that Americans, no matter what their income level, rely on ready access to payphones, either as their only means of telecommunications, or as a supplement to wireless and other wireline telecommunications services. For those who have neither a home phone nor a wireless phone, ready, affordable access to the telephone network through payphones truly is a crucial “lifeline” service. This is true both for important day-to-day calls (e.g., employment or child care related calls) and for emergency communications. For those with home and office phones, but without a wireless phone, payphones are important when away from home or office and are critically important in emergency situations. For those with wireless phones, payphones provide valuable (and, in the case of emergencies, critical) backup when, as is often the case, wireless phones are not able to function.

Each and every payphone provides universal service. The same payphone, on any given day, might be used by an immigrant worker using a prepaid card to call back to his home country to speak with a family member, a businesswoman whose wireless phone is busied out calling back to her office, an unemployed man accessing messages regarding

employment prospects via a Community Voice Mail-provided service or a teenager calling to tell her parents she may be late coming home that night. Each of the approximately two million payphones throughout the country handles a wide variety of calls each day.⁴

Congress has recognized the unique nature of payphones and the role they play in providing ready, affordable access to the telephone network. In 1996, Congress enacted Section 276 of the Communications Act of 1934, as amended (“Act”),⁵ directing the Commission to take actions that would promote the widespread deployment of payphones.⁶ Moreover, payphone service has a fundamental role in the provision of universal service as mandated by section 254 and other provisions of the Act.

Yet today, because of changing economics in the payphone industry, ready, affordable access to the network through payphones is quickly eroding. The dramatic expansion of wireless services has had the effect of reducing the overall volume of calls made at payphones. The result has been that payphones in growing numbers are being removed from locations where they are still needed by the public but no longer attract a sufficient number of calls to remain economically viable. As a result, wireless growth is having a disproportionate impact on those who rely on payphones, most particularly on those for whom wireless is not an affordable option.⁷ Absent prompt action to stabilize the

⁴ See, e.g., Liza Mundy, *Hearing the Call; if you're on the wrong side of the digital divide, what does it take to get by? Thirty-five cents and a glimmer of hope*, The Washington Post Magazine, Sept. 2, 2001 (providing anecdotal, but thorough, coverage of the types of calls made at payphones at an Arlington, Virginia subway station). A copy of the article is attached as Appendix B, Tab 1.

⁵ 47 U.S.C. § 276.

⁶ Section 276(b)(1) directed the Commission to prescribe regulations that would “promote the widespread deployment of payphone services to the benefit of the general public.” 47 U.S.C. § 276 (b)(1).

⁷ See, e.g., James A. Fussell, *Wireless options crowding out payphones, leaving some people without a dial tone to depend on*, Kansas City Star, Sept. 19, 2001 (copy attached as Appendix B, Tab 2).

number of payphones deployed, the public will no longer have ready, affordable access to the network through payphones. All segments of the public will suffer from the loss of access, and those who cannot afford a home phone or the cost of wireless will suffer most.

To help preserve ready, affordable access to the network through payphones, the Commission should promptly provide universal service support to stabilize payphone deployment before it plunges further. The level of support should be equal to the end user common line (“EUCL”) charge assessed on (or imputed to)⁸ payphone lines (currently ranging from a low of \$3.81 per payphone line in the District of Columbia to \$9.20 per payphone line in New Mexico, Montana and Wyoming and with a weighted average of \$6.70).⁹ For the approximately two million payphone lines currently deployed, the amount of support required would be approximately \$160 million annually.

For payphone lines serving sparsely populated high-cost/rural areas, where payphone viability is particularly vulnerable, there is an even greater need for ready, affordable access to the network through payphones.¹⁰ In high cost/rural areas, in addition to support equal to the EUCL charge, payphone service should receive at least \$5.00 per payphone line in supplemental support (as well as current local switching and long term support) from the Commission’s High Cost Fund. Assuming there are 150,000 payphone lines serving high-cost/rural areas, the supplemental support required would be \$9 million annually.

⁸ See, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 20541, ¶ 187 (1996)(EUCL charge imputed to LEC-owned payphones).

⁹ Appendix C shows the EUCL charges assessed local exchange carriers in the various states, including the national weighted average EUCL charge.

¹⁰ Although we do not specifically address insular areas herein, supplemental support should be provided to such areas as appropriate.

The support would apply evenly to all similarly situated payphones across the board (i.e., the same support would be provided to all payphones in high-cost/rural areas, and the same support would apply to all other payphones nationwide). Thus, consistent with the competitive neutrality mandated by Section 276 of the Act, no payphone provider would gain an advantage over its competitors.

Federal universal service support for payphones would have a much broader purpose than the various state public interest payphone programs. The state programs, which are few in number, are primarily targeted at funding payphones in specific, narrowly-described locations, such as public parks or libraries. While thousands of payphones are being removed from locations around the country each month, the state programs, in total, appear to support fewer than 500 payphones nationwide. The few state programs that do exist tend to entail significant and recurring administrative tasks (e.g., submission and review of detailed applications for each public interest payphone) and are designed with varying state-specific policies in mind.

Widespread deployment of payphones is federal policy that applies to all states, not just some. Accordingly, support for ready, affordable access to the network by payphones nationwide should come from the federal universal service funds, and be supplemented by state public interest payphone programs as the states deem appropriate.

Ready, affordable access to the network by payphones is not only a Congressional mandate, it is sound policy. Yet we are at a juncture where, absent timely provision of significant federal universal service support, such access is in jeopardy.

II. STATEMENT OF INTEREST

APCC is a national trade association representing over 1,300 primarily independent (non-LEC) providers of pay telephone equipment, services and facilities.

APCC seeks to promote competitive markets and high standards of service for pay telephones. To this end, APCC actively participates in Commission proceedings affecting payphones.

III. PAYPHONE SERVICE TODAY: A UNIQUE FORM OF UNIVERSAL SERVICE THAT IS RELIED ON BY ALL AND IS A LIFELINE FOR MANY

A. Payphone Service Is Unique

Payphones are a unique form of universal service. Unlike a wireless phone or the typical wireline phone, a payphone user does not have to make an upfront investment in equipment, await order processing and credit checks or pay recurring monthly charges. Payphone service is an on demand/per use service that provides even low income Americans with affordable access to the telephone network. Payphones are reliable, widely deployed and are used by all segments of the public to supplement wireless and other wireline services and, by millions of Americans, as a “lifeline” service.¹¹

B. Payphone Service Deployment

In urban areas, payphones serve a wide variety of locations. Payphones are located at transportation hubs (airports and train, bus and subway stations), hotel lobbies, movie theaters, sports arenas, casinos and other entertainment centers, shopping malls, gas stations, truck stops, restaurants, grocery stores, convenience stores, and many other retail outlets. Payphones also are found in public buildings, such as museums, libraries, schools (including public and private college campuses), and government office buildings (such as the Commission’s offices at the Portals). In the business districts of large cities, such as

¹¹ As of November 2000, approximately 6.3 million households do not have a home phone. See Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, *Universal Service Monitoring Report*, CC Docket No. 98-202 (October 2001) at 6-9 (“*Universal Service Monitoring Report*”).

New York or Washington, DC, payphones are found on many city blocks. Perhaps most importantly, payphones are located in urban low income neighborhoods where many residents do not have access to other telecommunications services.

In high-cost/rural areas, of course, payphones are more sparsely situated. Unlike in major cities, where a payphone is probably a short walk away, rural payphones more likely are a short drive away. Payphones are found at gas stations, highway rest areas, the country store, and on Tribal Lands.

According to data compiled by the Commission, today there are just under two million payphones nationwide. That is roughly one payphone for every 100 access lines and every 135 Americans nationwide.¹² Although there is variation among the states in payphone density per access line and per resident, the variation among most of the states is not wide. The on demand/per use service offered by payphones is a necessity not only in particular states or regions but throughout the country as a whole.

C. Payphone Service Users

Just about everyone uses payphones. Even well-heeled, cellphone toting businessmen and businesswomen need payphones. Wireless phones often get left at home or the office, have batteries that die, experience weak or non-existent signals, and get busied out because of network congestion. It is in circumstances such as these that those who can afford wireless benefit from having a payphone nearby that they can use to satisfy their immediate telecommunications needs, whether it is a call back to the office to check voice mail, a call home on personal business or a 911 call to request emergency assistance.¹³

¹² See spreadsheet titled "Payphone Density by Population and by Loop," attached as Appendix D.

¹³ See, e.g., Christopher Boyd, *Tuesday's tragedy highlights value of payphones*, Orlando Sentinel Sept. 17, 2001 (describing surge in wireless calls that overwhelmed many wireless networks following the September 11, 2001 terrorist attacks, with result that many people (footnote continued on next page)

Most Americans still do not own a wireless phone and many, for financial or other reasons, probably never will. Although most individuals have access to a phone at their office and/or home, they are dependent on ready access to payphones when they are away from their home and office. This need for a payphone could arise on a shopping trip to the local mall, a family vacation to Disney World or a business trip to New York City. In some instances, these individuals need access to a payphone as a matter of convenience. In other instances, ready access to a payphone is a matter of critical importance – to report a crime in progress or to summon emergency rescue help.¹⁴

Most importantly, there are those individuals who not only lack the resources to afford wireless, but who cannot even afford a home phone. Ready, affordable access to the network through payphones is critical for this group, both for routine day-to-day calls and for emergency communications.¹⁵ It is this group that the Lifeline program has targeted for support. But for those individuals who do not, for whatever reason, take advantage of Lifeline service to obtain a home phone, payphones are their lifeline. Community Voice Mail, in its comments filed in the universal service definition proceeding, explained that its “clients – the homeless, the unemployed, people seeking drug or alcohol abuse counseling

with wireless phones used payphones instead. A copy of this article is attached at Appendix B, Tab 3.

¹⁴ See, e.g., Barbara Egbert, *It Was a Dark and Stormy Night. Really.* The Mercury News (San Jose, Cal.) Mar. 6, 2001 (payphones necessity for emergencies); Shienne Jones, *Lack of payphones makes campus unnecessarily dangerous*, Daily Reveille (Baton Rouge, LA), Apr. 18, 2001 (copies attached as Appendix B, Tabs 4 and 5, respectively).

¹⁵ See, e.g., Rob Borsellino, *Yanking pay phones is like pulling the plug on people's lives*, Sun-Sentinel (Palm Beach County, Fla.), Feb. 22, 2001; *The end of the line; the poor and elderly are among those most disadvantaged as pay phones disappear from our streets*, The Record (Bergen County, NJ), May 6, 2001; Stephanie Kirchgaessner, *Vanishing from the landscape; Payphones in the US*, Financial Times (London), May 16, 2001 (discussing, among other issues, the role of payphones for the Community Voice Mail program). Copies of these articles are attached at Appendix B, Tabs 6, 7 and 8, respectively.

and others in distress who are trying to restore order to and reconstruct their lives – rely on payphones as their primary means to meet their communications needs.”¹⁶

The availability of payphones is particularly important for rural and small town residents and on Tribal Lands.¹⁷ Payphones are few and far between in those areas and wireless coverage is often not available.¹⁸ A recent article in the Los Angeles Times about the impact of payphone removal on small towns offered the following quote:

“It doesn’t sound really serious when you say ‘Take a payphone out here and there’ if you live in a city,” said Siskiyou County [California] Supervisor Bill Hoy. “But when you take one out of a community and it’s 10, 20 miles or 100 miles to the next payphone, it’s different.”¹⁹

Payphones in these areas, in addition to their importance for general purpose calls, are crucial for emergency calls.

In short, we all use and rely on ready access to this unique, on demand/per use service – payphone service.

¹⁶ See Community Voice Mail letter at Appendix A. Community Voice Mail clients also include those who may have a home phone, but who, as in the case of spousal abuse victims, fear to use their home phone and need to rely on ready access to payphones instead.

¹⁷ With regard to payphones on Tribal Lands, see, e.g., Joe Gardyas, *Shrinking revenues lead to a few less payphones*, Bismarck Tribune, Apr. 11, 2001 (copy attached as Appendix B, Tab 9).

¹⁸ A table showing payphone density per square mile for the various states is attached as Appendix E. Not surprisingly, payphone density for many of the largely rural western states is far less than for the smaller, more density populated eastern states.

¹⁹ Bettina Boxall, *Removal of many payphones poses problems for small town residents*, Los Angeles Times, Jan. 22, 2001 (copy attached as Appendix B, Tab 10).

IV. THE ACCELERATING RATE OF PAYPHONE REMOVAL

In 1984, when competition was first introduced in the payphone industry,²⁰ the number of payphones deployed was about 1.6 million.²¹ By 1998, according to Commission data, the number of payphones deployed was about 2.15 million.²² The Commission found that this level of deployment was consistent with Congress's goal of widespread deployment of payphones.²³

After 1998, the number of payphones deployed began to drop.²⁴ At first, the decline was slight. Between 1998 and March 1999, the number of payphones deployed decreased from 2.15 million to 2.12 million, a decrease of a little more than one percent. Between March 1999 and March 2000, the decrease in payphones deployed decreased from 2.12 million to 2.06 million, a decrease of less than three percent.²⁵ However, between March 2000 and March 2001 the number of payphones decreased by

²⁰ See *Registration of Coin Operated Telephones*, Memorandum Opinion and Order, 49 Fed. Reg. 27763 (1984).

²¹ AT&T Bell Laboratories, *ENGINEERING AND OPERATIONS IN THE BELL SYSTEM* (2ND Ed. 1983), 76.

²² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, 14 FCC Rcd 2545, n.390 (1999) ("*Third Report and Order*"). According to other sources of data available to APCC, there were 2.6 million payphones deployed in 1998. According to those same sources, the number of payphones deployed today has dropped to 2.2 million.

²³ *Id.* ¶ 141. While the *Third Report and Order* noted that the 2.15 million number may change in response to developments in the competitive environment, such as reduced pricing for wireless (*id.* n.282), the order did not address the need for payphone service as a unique, "on demand/per use" service (for which wireless is not a satisfactory substitute) to serve federal universal service goals.

²⁴ Although wireless has grown rapidly since its inception in 1985, it was in 1998, when wireless carriers introduced nationwide flat rate plans, that the demand for wireless really exploded. In the last three years, the number of wireless customers has nearly doubled, from about 60 million in mid-1998 to almost 120 million in mid-2001. See Cellular Telecommunications & Internet Association, *Twelve-Month Wireless Industry Survey Results (June 1985 to June 2001)* (attached as Appendix F).

²⁵ See "Comparison of Payphone Deployment (1999-2001)" attached as Appendix G.

approximately seven percent from 2.06 million to 1.92 million, a significantly higher rate of decrease than the payphone industry experienced during the preceding two years.²⁶ The announcement earlier this year by BellSouth, which operates 143,000 payphones throughout the southeast,²⁷ that it plans to exit the payphone market soon is a precursor of an even higher rate of decrease in 2002 and 2003.²⁸

The viability of payphone service is tied directly to call volume. As wireless continues to grow, diverting more and more traffic from payphones, the number of payphones that can viably remain deployed, absent Commission action, will continue to shrink.²⁹

The Commission has before it proceedings which may affect the economics of the payphone industry,³⁰ but none of those proceedings address the unique role that

²⁶ *Id.* To appreciate this trend toward the removal of payphones, one need only glance at the growing number of empty backplates on phone banks at airports and elsewhere. For example, at the payphone bank in the lobby at the Commission's offices, there are backplates for nine payphones, yet only five payphones are installed.

²⁷ Eight of the nine states served by BellSouth rank below the national average in telephone penetration. See Federal and State Staff for the Joint Board, *Universal Service Monitoring Report*, (October 2001) at 6-21, Table 6.2, showing that as of 2000, telephone penetration in Alabama (91.9%), Florida (92.1%), Georgia (91.1%), Kentucky (93.3%), Louisiana (92.6%), Mississippi (89.2%), North Carolina (93.9%), South Carolina (93.9%) were all below the national average penetration of 94.4%. Accordingly, BellSouth's exit from the payphone market will have a disproportionately large impact on those who reside in households without a phone.

²⁸ See, e.g., Stan Choe, *BellSouth to Extend Pay Phone Operation by One Year in Southeast*, The Charlotte Observer, Aug. 21, 2001 (copy attached as Appendix B, Tab 11).

²⁹ See, e.g., Duwayne Escobedo, *Will payphones become extinct?*, Northwest Florida Daily News (Fort Walton Beach, FL), Apr. 15, 2001 (copy attached as Appendix B, Tab 12).

³⁰ See, e.g., *In the Matter of Wisconsin Public Service Commission; Order Directing Filings*, CCB/CPD No. 00-1, 15 FCC Rcd 9978 (CCB Mar. 2, 2000) (Application for Review pending); *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Order on Clarification, CC Docket No. 96-128, FCC 01-344 (Nov. 21, 2001).

payphones serve in providing ready, affordable access to the telephone network. Moreover, no matter what the outcome of those proceedings, ready, affordable access to the network through payphones will remain at risk. Federal universal service support for payphones is required and it is required promptly.

V. UNIVERSAL SERVICE SUPPORT FUNDING FOR PAYPHONE SERVICE

Federal universal service support funding equivalent to the EUCL charge assessed payphone providers should be provided to all payphones nationwide to help preserve ready, affordable access to the network for the benefit of the entire public. In addition to the EUCL-level support for payphone lines, payphone service in high-cost/rural areas should receive at least \$5.00 per payphone line as supplemental support (as well as current support) from the Commission's High Cost Fund. The total cost of such support would be approximately \$169 million (\$160 million for nationwide support and \$9 million for high-cost/rural support), which is about three percent of current total federal universal service support for all programs.

A. Support for Payphone Lines Nationwide

To help stabilize payphone deployment, universal service support equal to the applicable tariffed payphone line EUCL charge should be provided for each payphone line nationwide. This would include payphone lines served by local exchange carriers ("LECs") that do not assess a EUCL charge.³¹ As in the case for Lifeline recipients, support for independent payphone providers would be reflected on the monthly bill received from the

³¹ For LECs who do not assess a EUCL charge – and there are at least some competitive LECs ("CLECs") for whom this is the case – the level of support would be the same as the EUCL assessed by the incumbent LEC serving the area in which the CLEC-served payphones are located. Such CLECs should not have to become classified as eligible telecommunications carriers under section 214(e) in order to obtain the Lifeline-type universal service support proposed in this Section V.A.

serving LEC. For LEC-owned payphones, the LEC would simply make book entries reflecting the support for its payphone division. LECs would obtain reimbursement for payphone lines in a manner similar to current reimbursement procedures for Lifeline service.³²

This nationwide approach would be consistent with the concept that each and every payphone serves the goal of universal service and would allow payphone providers to keep in service many payphones that otherwise would have to be removed.

B. Additional Support for Payphone Lines Serving High-Cost/Rural Areas

Payphone lines serving high-cost/rural areas require supplemental support. Payphone deployment in high-cost/rural areas naturally tends to be more sparse than in urban areas. Because fewer households in rural areas tend to have home phones, there is an even greater need for payphones.³³ Accordingly, in addition to support equal to the EUCL charge, rural LECs and non-rural LECs serving high cost areas should receive support from the Commission's High Cost Fund of at least \$5.00 for each payphone line serving high-cost/rural areas. That supplemental support would be in addition to, not in lieu of, the local switching and long term support that the LECs otherwise receive from the High Cost Fund.

A provision should be added to Part 54, Subpart D (Universal Service Support for High Cost Areas) prescribing how rural LECs and non-rural LECs serving high cost areas would obtain reimbursement from the High-Cost Fund. One condition to LEC receipt of the supplemental \$5.00 per payphone line support would be that the LEC

³² See 47 C.F.R. § 54.407.

³³ See, e.g., Bettina Boxall, *Removal of many payphones poses problems for small town residents*, Los Angeles Times, Jan. 22, 2001 (copy attached at Appendix B, Tab 10).

reduce its tariffed payphone line rate by \$5.00 (or impute the \$5.00 to its payphone line division) and maintain that reduced rate.

C. Impact of Proposed Support on Universal Service Fund

Assuming (1) deployment of approximately two million payphones and (2) a weighted average EUCL charge of \$6.70, the proposed nationwide support would cost approximately \$160 million per year (\$6.70 per month x 2 million payphones = \$13.4 million per month x 12 months = \$160.8 million per year). Assuming that there are approximately 150,000 payphones serving high-cost/rural areas,³⁴ a subsidy of \$5.00 per line per month for those payphone lines would equal \$750,000 per month or \$9 million per year.

The current total annual budget for all universal service fund ("USF") programs (Schools and Libraries, Rural Health Care, High-Cost and Low Income) is approximately \$5.5 billion.³⁵ The current contribution factor for the USF program is .069187 of telecommunications providers' interstate and international end-user telecommunications revenues. Adding \$169 million (\$160 million + \$9 million = \$169 million) to the USF

³⁴ We are aware of no readily available data as to the number of payphones located in high-cost/rural areas. Based on the Commission's quarterly reporting of universal service funding, in the 2nd Quarter of 2001 there were 4.1 million access lines served by non-rural LECs receiving high cost support (Source: HC9.xls), and an additional 9 million access lines served by rural LECs that qualify for support (Source: HC1.xls). Assuming payphone deployment in these areas is comparable to the nation as a whole (roughly 1.2% of switched access lines serve payphones), roughly 150,000 payphones would qualify for the additional high cost support recommended here.

³⁵ For the first quarter of 2002, the Commission projected demand and administrative expense for the various USF programs as follows: Schools and Libraries --\$559,531,000; Rural Health Care -- \$4,829,000; High-Cost -- \$655,353,000; and Low Income -- \$158,743,000. The total program budget for the first quarter is \$1,378,456,000, which on an annualized basis would be \$5,513,824,000. See Public Notice "Proposed First Quarter 2002 Universal Service Contribution Factor, released December 7, 2001 in CC Docket No. 96-45 (DA 01-2823).

budget would increase the telecommunications providers' contribution factor by three percent to .071263.

VI. STATUTORY AUTHORITY

Statutory authority for universal service support for payphone service is provided by section 254 of the Act and – like authority for Lifeline service – from sections 1, 4(j), 201 and 205 of the Act.³⁶ To the extent universal service support is tied to section 254, payphone service would have to meet the statutory criteria spelled out in that section.

Under section 254 (c)(1) of the Communications Act, as amended (“Act”), the Joint Board in recommending and the FCC in approving services eligible for USF support must consider whether the proposed services are (1) “essential to education, public health, or public safety;” (2) “have, through the operation of market choices by consumers, been subscribed to by a substantial majority of residential customers;” (3) “are being deployed in public telecommunications networks by telecommunications carriers;” and (4) “are consistent with the public interest, convenience and necessity.”

With regard to criteria (1), the 911 service available from any payphone at no charge clearly is “essential to . . . public safety.”³⁷ With regard to criteria (2), although residential customers do not “subscribe” to payphone service as such, payphone service is

³⁶ See *In re Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8952-57 (1997) (“*Universal Service Order*”) (noting that the FCC, since 1985, has administered Lifeline and Link Up programs pursuant to its general authority under sections 1, 4(j), 201 and 201 of the Act).

³⁷ See, e.g., North Carolina Sheriffs' Association Law Enforcement Officers and State Officials of North Carolina, *North Carolina Sheriffs' Association Supports FCC Action to Ensure Widespread Deployment of Pay Telephones*, adopted July 26, 2000, Asheville, North Carolina (copy attached as Appendix H).

an “on demand/per use” supplement to residential (and other) services. Moreover, the criteria need not be met, just considered.³⁸

As for criteria (3), payphone lines certainly are deployed in public telecommunications networks by telecommunications carriers. As for criteria (4), APCC has shown above that ready access to payphones benefits all Americans, and that universal service support for payphones would be “consistent with the public interest.”

In addition to these statutory criteria, Section 254(b) of the Act provides that the Commission and the Joint Board shall base universal service policies on certain principles spelled out in the Act, as well as such “principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.”³⁹ The Joint Board recommended and the Commission adopted one principle under Section 254(b) – that of “competitive neutrality.”⁴⁰

The Commission explained the principle of “competitive neutrality” as follows:

Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.⁴¹

The proposed support would not favor one provider over another similarly situated provider. All payphones in non-rural areas, whether independent or LEC-owned, would

³⁸ The FCC stated that “all four criteria enumerated in section 254(c)(1) must be considered, but not necessarily met, before a service may be included within the general definition of universal service” *Universal Service Order* at 8809, ¶ 61. Also, arguably, payphone service meets the second criteria in that a majority of residential customers presumably make at least occasional payphone calls.

³⁹ 47 U.S.C. § 254(b)(7).

⁴⁰ *Universal Service Order* at 8801, ¶ 47.

⁴¹ *Id.*

receive the same level of support. And all payphones in high-cost/rural areas, whether independent or LEC-owned, would receive the same level of support. Nor does the proposed support favor wireline technology over competing wireless technology, because at present there are very few wireless payphones,⁴² and because payphone service is a unique, on demand/per use service that, for purposes of universal service support, is not competing with, but instead is supplementing, wireless service.

VII. RELATIONSHIP OF FEDERAL SUPPORT TO STATE PUBLIC INTEREST PAYPHONE PROGRAMS

The proposed universal service support has a much different purpose than the few public interest payphone programs established by the states under section 276(b)(2) and the FCC's *Payphone Order*.⁴³ Even for the few state programs in existence,⁴⁴ very few public interest payphones have been funded, apparently less than 500 payphones nationwide.⁴⁵ The state programs are aimed primarily at funding payphones in narrowly-defined locations, such as public buildings or parks. Few location owners (whether public

⁴² Currently, wireless payphones are used for unique applications, such as special events. To the extent that wireless payphones emerge for general purpose use (perhaps to serve remote areas or to bypass landline carriers), universal service support could be devised that applies to such payphones.

⁴³ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, ¶¶ 264-86 (1996) ("*Payphone Order*").

⁴⁴ To date, only California, Indiana and Wisconsin appear to be funding public interest payphones. Other states that have adopted the public interest payphones program but currently have no payphones funded by the program, are Alaska, Idaho, Louisiana and New Hampshire.

⁴⁵ We understand that California, Indiana and Wisconsin, in the aggregate, have funded fewer than 500 public interest payphones. The Regulatory Commission of Alaska currently is in the process of designating public interest payphones, which may result in an increase in the number of public interest payphones deployed. See *Designation of Public Interest Pay Telephones Under 3 AAC 53.740 - 3 AAC 53.799*, Order Initiating Process to Designate Public Interest Pay Telephones and Establishing Filing Requirements, (Docket U-01-124; Order No. 1)(Nov. 14, 2001), 2001 Alas. PUC LEXIS 558.

agencies or private entities) appear willing to undertake the administrative task of submitting initial and annual renewal applications and undergoing annual audits.⁴⁶

Ready, affordable access to the telephone network through payphones nationwide is a vital federal objective, applies to all states not just some, and most appropriately should be funded by the federal universal service fund as supplemented by state funding where a state deems appropriate.

VIII. CONCLUSION

For millions of Americans, ready, affordable access to the telephone network through payphones is a basic necessity. For others, ready access to a payphone is a highly valuable (and potentially life saving) benefit. Because of the immediate threat to that access, it is now time for the Joint Board to recommend (and the Commission to provide) universal service support for payphone service.

⁴⁶ See, e.g., Cynthia Denman, *Public interest payphones are becoming a reality in Wisconsin*, PERSPECTIVES 39 (May 2001), which describes the administrative tasks involved in obtaining public interest payphone funds in Wisconsin, attached as Appendix B, Tab 13. Under federal universal service support, any administrative burden the LECs would undertake in obtaining reimbursement for payphone support would only be a small incremental addition to the burden they undertake to obtain reimbursement for other forms of universal service support.

Dated: December 31, 2001

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allan Hubbard", written over a horizontal line.

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CERTIFICATE OF SERVICE

I do hereby certify that on this 31st day of December 2001 a copy of the foregoing Comments Of The American Public Communications Council was served by hand delivery to the following parties:

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